



March 23, 1999

Ms. Barbara Heptig
Assistant City Attorney
City of Arlington
620 West Division Street
Arlington Texas 76004-1065

OR99-0798

Dear Ms. Heptig:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 122963.

The Police Department of the City of Arlington (the "city") received a request for 84 police reports from 1996 through 1998. You state that most of the requested police reports will be released to the requestor. You claim that thirteen of the requested reports are excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes.

You contend that section 58.007 of the Family Code, in conjunction with section 552.101, protects from disclosure Exhibit B, which is responsive to the request for information. Section 58.007 of the Family Code makes certain juvenile law enforcement records confidential. Family Code section 51.04(a) states that the Juvenile Justice Code, Title 3 of the Family Code, "covers the proceedings in all cases involving the delinquent conduct or conduct indicating the need for supervision engaged in by a person who was a child within the meaning of [Title 3] at the time he engaged in the conduct." Section 58.007 deems confidential law enforcement records from all cases involving the delinquent conduct or conduct indicating the need for supervision engaged in by a child. Exhibit B is a record involving the actions of a juvenile occurring after September 1, 1997, and must be withheld

from public disclosure under section 58.007 of the Family Code and section 552.101 of the Government Code.

You also contend that section 261.201(a) of the Family Code, in conjunction with section 552.101 of the Government Code, protects from disclosure Exhibits C-1 through C-3, which are responsive to the request for information. Section 261.201(a) of the Family Code provides:

The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect [of a child] made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

The information at issue in Exhibits C-1 through C-3 resulted from investigations of the assault of children. We are not aware of any rules promulgated by the city that permit the dissemination of information about the assault of children. Accordingly, the information in Exhibits C-1 through C-3 is made confidential in its entirety by section 261.201 of the Family Code and must be withheld from disclosure under section 552.101 of the Government Code. *See* Open Records Decision No. 440 (1986) (applying former Fam. Code § 34.08).

You contend that section 552.101 in conjunction with common-law privacy protect from disclosure Exhibits D-1 through D-3. Section 552.101 also encompasses common-law privacy and excepts from disclosure private facts about an individual. *Industrial Found of the South v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Therefore, information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992).

This office has found that the following types of information are excepted from required public disclosure under constitutional or common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), and personal financial

information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990), and information concerning the intimate relations between individuals and their family members. *See* Open Records Decision No. 470 (1987). We agree that some of the information in the police incident reports in Exhibits D-1 through D-3 are protected from disclosure by common-law privacy. You state that it appears that the requestor knows the identity of the individuals who are the subject of Exhibits D-1 through D-3 and that the reports in their entirety must be withheld to protect the privacy of the subjects.¹ We have examined the documents, and we have marked the information that you must withhold in Exhibits D1 and D2. All other information, including Exhibit D-3, must be released.

You contend that Exhibits E-1 through E-6 are protected from disclosure under section 552.108 of the Government Code. Section 552.108 of the Government Code excepts from required public disclosure

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

* * *

(c) This section does not except from [public disclosure] information that is basic information about an arrested person, an arrest, or a crime.

Because you have informed us that the records at issue pertain to pending criminal investigations or prosecutions, we conclude that you have met your burden of establishing that the release of Exhibits E-1 through Exhibits E-6 at this time could interfere with law enforcement or prosecution. You therefore may withhold Exhibits E-1 through Exhibits E-6 at this time pursuant to section 552.108.

Section 552.108 does not, however, except from required public disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Because you have raised no other exception to disclosure of Exhibits E-1 through E-6, the city must release the types of information that considered basic in accordance with *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

¹The request for information refers to "reports listed on the attached correspondence;" however, the attached correspondence was not submitted to this office. We assume that the requestor knows the identity of the subjects of the incident reports in Exhibits D-1 through D-3.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in cursive script, appearing to read "Emilie F. Stewart".

Emilie F. Stewart
Assistant Attorney General
Open Records Division

EFS\nc

Ref: ID# 122963

Enclosures: Submitted documents

cc: Ms. Brenda Gutierrez
2261 Brookhollow Plaza, Suite 210
Arlington, Texas 76006
(w/o enclosures)